IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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S.A.O No. 62 of 2004

Date of decision : 30.11.2006.

Smt. Shakuntala ... Appellant

Versus

Smt. Shobha and another ... Respondents.

...

Present: Mr. Adarsh Jain, Advocate
for the appellant.

Mr. Jaswant Jain, Advocate
for the respondents.

...

VINOD K. SHARMA, J

The present appeal has been filed against an order 11.8.2004 passed by the learned lower Appellate Court remanding the case back to the trial Court for decision afresh after deciding the application moved for appointment of Local Commissioner.

It is not in dispute that the plaintiff-respondent had moved an application for appointment of Local Commissioner in which notice was given and reply was also filed by the petitioner herein. However, no decision was taken on the said application. The learned trial Court, while partly decreeing the suit, took note of the fact that application for appointment of Local Commissioner was moved and was not decided. In the subsequent part of the judgment, the learned trial Court rejected the contention raised by the counsel for the plaintiff-respondent that the Local Commissioner was required to be appointed for determination of the matter. The learned Appellate Court took note of this fact and came to the

conclusion that the observation made by the trial Court cannot be said to be a decision on the merits of the application and, therefore, the application was deemed to be pending. Thereafter, relying upon the judgments in **Gamchu** versus **Sohan Lal and others**, 1996 PLJ 608, **Shadi Lal and others** versus **Municipal Committee, Rewari,** 1994 (1) PLR 633 and **Jagir Kaur and another** versus **Nirmal Singh and another**, 1993 (2) PLR 374, the learned Appellate Court came to the conclusion that the decree was required to be set aside and case remanded back to the trial Court for want of decision on the application which remained undecided.

There is no illegality in the impugned order which may call for interference in this appeal. Dismissed.

Parties through their counsel are directed to appear before the trial Court on January 15, 2007.

(VINOD K. SHARMA)
JUDGE

November 30, 2006

RS